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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 73-2065

CONCORDIA PARISH SCHOOL BOARD,

Petitioner,

versus

SAMMY DAVIS, JR.,

Respondent

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
QUESTIONS PRESENTED.	2
STATEMENT OF THE CASE	3
REASONS FOR DENYING THE WRIT	
I. With respect to the rights of dismissed educators, the decision below is consistent with decisions of this Court, other decisions of the United States Court of Appeals for the Fifth Circuit, and does not conflict with decisions of other Circuits.	9
II. The decision below is not in conflict with the decision of this Court in Edelman v. Jordan, __U.S. __, 29 La.Ed.2d 662, 94 S.Ct. __ (March 25, 1974).	13
CONCLUSION	16
CERTIFICATE	18
Appendix A	19
Appendix B	49
Appendix C	52

TABLE OF AUTHORITIES

	Page
CASES	
Board of CP of New Orleans v. Splendour S&E Co., 273 So.2d 19 (La. 1973)	15
Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 La.Ed.2d 548 (1972)	10
Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1970)	2,4
Chisley v. Richland Parish School Board, 448 F.2d 1251 . . .	8
Cornist v. Richland Parish School Board, 448 F.2d 595 . . .	8
Edelman v. Jordan, __U.S.__, 39 La.Ed.2d. 662, 94 S.Ct. 1347 (1974)	3,13,14, 15,16
Griffin v. School Board of Prince Edward County, 377 U.S. 218 (1964)	15
Hall v. St. Helena Parish School Board, 417 F.2d 801 (5th Cir., 1969)	3

Lee v. Roanoke City Board of Education, __F.2d__ (5th Cir., No. 72-1656, June 28, 1973) 10,11

Morgan Dallas Corp. v. Orleans Parish School Board (U.S.D.C., E.D. La., No. 69-1431, Aug. 27, 1969). . 15

Orleans Parish School Board v. Williams, 300 So.2d 848 (La. 1974). 15

Perry v. Sindermann, 408 U.S. 593, 92 S.Ct. 2694, 33 La.Ed.2d 570 (1972). 10

Robinson v. Jefferson County Board of Education, __F.2d__ (5th Cir., No. 73-2134, Oct. 23, 1973) 10,12

Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir., 1970) 2,4,6, 11,12,16

Smith v. Concordia Parish School Board (U.S.D.C., W.D.La., C.A. No. 11,577)(1970) 2,5

Smith v. Concordia Parish School Board, 445 F.2d 285 (5th Cir., 1971) 2,5

Stapp v. Avoyelles Parish School Board (U.S.D.C., W.D.La., No. 74-612, August 1, 1974) 15

Thompson v. Madison County Board of Education, 476 F.2d 676 (1973), reaff'd. in Thompson v. Madison County Board of Education, __F.2d__ (5th Cir., No. 73-3509, June 20, 1974) 10,11,12

STATUTES

L.S.A.-R.S. 17:51 14

L.S.A.-R.S. 17:81 14

L.S.A.-R.S. 17:83 14

L.S.A.-R.S. 17:87.6 14

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 73-2065

CONCORDIA PARISH SCHOOL BOARD,

Petitioner,

V.

SAMMY DAVIS, JR.,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent prays that this Court deny the petition for writ of certiorari sought by petitioner to review the decision of the United States Court of Appeals for the Fifth Circuit rendered April 24, 1974, affirming

the judgment of the United States District Court for the Western District of Louisiana issued September 1, 1972.

QUESTIONS PRESENTED

I.

Whether the Court of Appeals clearly erred in upholding the District Court's reinstatement will full rights of a black educator who had been dismissed by petitioner Board without the development, promulgation and application of non-racial objective criteria, although the Board had repeatedly been ordered to develop such criteria by both the Court of Appeals and the District Court in the following decisions: Smith v. Concordia Parish School Board, consolidated sub nom Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir., 1969), rev'd. on other grounds, Carter v. West Feliciana School Board, 396 U.S. 290 (1970); Smith v. Concordia Parish School Board, U.S.D.C., W.D. La., C.A. No. 11,577, Order of September 3, 1970 (unreported, appears as Appendix A attached hereto); Smith v. Concordia Parish School Board, 445 F.2d 285 (5th Cir., 1971) (attached as Appendix B hereto).

II.

Whether the Court of Appeals' decision requiring this local elected School Board, which has the power to sue and be sued, and the power to levy and collect taxes, is barred by the Eleventh Amendment to the

United States Constitution as interpreted by this Court in Edelman v. Jordan, __U.S.__, 39 La.Ed.2d 662, 94 S.Ct. 1347 (1974).

STATEMENT OF THE CASE

The instant case is but another incident of this recalcitrant School Board resisting or attempting to circumvent explicit orders of the federal courts to desegregate and end racial discrimination in its schools. The long record in this case indicates that this Board had to be explicitly ordered to take each step along the desegregation process, and that in many instances, even after an explicit mandate was handed down, further litigation was necessary to bring the Board into compliance.

This school desegregation suit was originally filed in November, 1965. Operating under various forms of freedom-of-choice, the school system remained racially segregated. Hall v. St. Helena Parish School Board, 417 F.2d 801 (5th Cir., 1969). In August, 1969, on remand from Hall, the District Court approved a School Board-proposed desegregation plan which called for the gradual conversion to a unitary system over a three-year period. The plaintiffs appealed, and the Fifth Circuit reversed the District Court's Order in part, and directed the conversion to a unitary system by the beginning of the 1970-71 school year, and additionally required that this School Board develop non-racial objective criteria governing its employment practices to assure proper desegregation of its faculty

and staff. Singleton v. Jackson Municipal Separate School District (5th Cir., 1970), 419 F.2d 1211. Plaintiffs appealed to this Court, and this Court required conversion to a unitary system by February 1, 1970. Sub nom Carter v. West Feliciana Parish School Board, 396 U.S. 226 (1970).

On remand the District Court ordered the dismantling of the dual school system by February 1, allowing sex separation until a hearing to be conducted prior to the 1970-71 school term, and incorporated in its Order the ruling of the Fifth Circuit in Singleton, supra, relative to non-racial objective criteria. Smith v. Concordia Parish School Board, U.S.D.C., W.D. La., C.A. No. 11,577, Order of January 30, 1970.

Prior to the start of the 1970-71 school term, the Board dismissed and demoted twenty black educators and hired twenty-five white educators to replace them, without hiring a single black. Among the twenty black educators dismissed were Mr. Sammy Davis, Jr., whose second dismissal is the subject of this petition for certiorari, and Mr. Barney Schoby, a tenured black teacher who had been afforded a sham hearing, purportedly pursuant to the Louisiana Teacher Tenure Law before dismissal.[1] On a Motion for Supplemental

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[1]At this time Mr. Schoby was President of the predominantly black Concordia Education Association, an affiliate of the predominantly black Louisiana Education Association,

Relief filed by the plaintiffs, the District Court held that the dismissals and demotions, including those of tenured teacher Schoby and principal Sammy Davis, Jr., had been effected without the establishment of objective criteria as required by its January 30, 1970 Order, and ordered their reinstatement. Smith v. Concordia Parish School Board (U.S.D.C., W.D. La., C.A. No. 11,577, Order of September 3, 1970) (attached as Appendix A). On appeal the Fifth Circuit affirmed the reinstatement of the black teachers, as well as approved the use of ratios as a method of preventing racial discrimination against black teachers pending the development of objective criteria. Smith v. Concordia Parish School Board, 445 F.2d 285 (5th Cir., June 15, 1971). The Court of Appeals further directed: "The District Court will require the Board, the plaintiffs, and the Department of Justice to submit, within fifteen days, non-discriminatory, non-racial objective criteria to cover both faculty reduction and dismissal for cause. If the

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which gained recognition as the Louisiana affiliate of the National Education Association when the all-white Louisiana Teachers Association refused to renounce segregation by merging with the LEA. At the time of the dismissal which is the subject of this case, Mr. Davis was President of the Concordia Education Association, and had been extremely active in the struggle of black teachers in Concordia Parish to receive fair treatment by the School Board.

parties cannot agree on such criteria, the District Court will, within thirty days thereafter, require the Board to adopt the criteria that the District Court prescribes so as to effectively comply with the provisions of Singleton." (Emphasis supplied). Without even having submitted to the District Court proposed objective criteria, the Board proceeded with its dismissal of Mr. Davis and filed their proposed criteria only after he had been dismissed on September 2, 1971.

The Board in its petition to this Court would lead the Court to believe that it had adopted and submitted to the Court valid objective criteria prior to Mr. Davis' dismissal. (Appendix D to petition for writ of certiorari). However, a full examination of the record, with which the Court of Appeals and the District Court were quite familiar, will indicate that the March, 1971 purported criteria were indistinguishable from those which the District Court in its September 3, 1970 Order, found to be far too vague to be considered objective. Further, this March, 1971 criteria never purported to be in compliance with the June 15, 1971 Order of the Fifth Circuit, which set forth the types of dismissals for which objective criteria were to be developed. The Board itself knew that it did not have nor did it apply objective criteria at the time of Mr. Davis' dismissal. The then attorney for the Board, District Attorney W.C. Falkenheiner, admitted at the District Court hearing herein that "at the time this hearing [Mr. Davis' hearing before the School Board] was held objective criteria

had nothing to do with that . . . and at the time of the hearing, we had no objective criteria." (5th Cir. App. p. 47, emphasis supplied); and at the District Court hearing on defendants' application for a stay, Mr. Falkenheiner again admitted that at the time dismissal proceedings were brought against Mr. Davis, that ". . . we were under orders of the Fifth Circuit to produce objective criteria and, of course, no inference by the Board here that it has any objective criteria. That is admitted, it had none". (5th Cir. App. p. 60). Further, although both sides had rested in the School Board hearing by Friday, August 30, 1971, the School Board deferred its decision on Mr. Davis' dismissal until Monday, September 2, 1971. On Monday, September 2, 1971, the same day that Mr. Davis was formally dismissed by the Board, the School Board filed with the District Court its proposed objective criteria in response to the June 15, 1971 Order of the Court of Appeals. This pleading is attached heretc as Appendix C. If the School Board believed that it already had objective criteria, it could have at least attempted to apply these criteria to Mr. Davis, or if it believed it had objective criteria, it would certainly have been unnecessary for the Board to file a new and different set of objective criteria on September 2, 1971.

The Board in its petition for writ of certiorari would also have this Court believe that respondent sat on his rights and did not assert them promptly in federal court. This is simply not the case. Prior to the School Board hearing, respondents moved for a

temporary restraining order and preliminary and permanent injunctions against the dismissal of Mr. Davis on grounds that the Board was not applying objective criteria and that the dismissal was racially discriminatory and retaliatory against Mr. Davis' civil rights activities. The District Court denied the temporary restraining order by ruling of August 20, 1971, which concluded "we must decline to sign the temporary restraining order attached to the motion; and relegate movants to the administrative and judicial procedure available to them under State law". 331 F.Supp. 330 (W.D. La., 1971). The District Court after denying the temporary restraining order did not set plaintiff-respondents' motions for preliminary and permanent injunctions for hearing, in spite of requests by plaintiffs' counsel, on grounds that the District Court's docket was overcrowded, and that the same issue was on appeal to the Fifth Circuit in two other teacher dismissal cases (Chisley v. Richland Parish School Board, 448 F.2d 1251, and Cornist v. Richland Parish School Board, 448 F.2d 594). Prior to the beginning of the 1972-73 school term, the District Court having still not set the remaining motions, plaintiffs on or about August 24, 1972 filed a second Motion for Supplemental Relief, together with motions for preliminary injunction, temporary restraining order, and summary judgment. A hearing was finally conducted on September 1, 1972, resulting in the decision affirmed by the Court of Appeals, and for which review is now sought.

After the time allowed by the Rules had expired, petitioner Board moved in the Court of Appeals for a rehearing, and to supplement the record on appeal, attaching to their motion the documents which they have attached as Appendices C through K of their petition for certiorari filed herein. The Court of Appeals, presumably viewing these documents and determining that they cast no new light on the case, denied petitioner School Board's motion to supplement the record. Petitioner has also sought stays in the Court of Appeals and in this Court, which have been denied. Accordingly, the District Court conducted a hearing on November 20, 1974, on the question of the exact determination of the dollar amount of the back pay award, as well as accepted briefs on the question of whether the Eleventh Amendment prohibited a back pay award. The petitioner School Board did not attempt to introduce any evidence on the question of the Eleventh Amendment at the November 20, 1974 hearing in the District Court. The District Court has taken the matter under advisement, calling for simultaneous briefs within twenty-one days of the hearing.

REASONS FOR DENYING THE WRIT

I. With Respect to the Rights of Dismissed Educators, the Decision Below is Consistent with Decisions of this Court, Other Decisions of the United States Court of Appeals for the Fifth Circuit, and Does Not Conflict with Decisions of Other Circuits.

The decision below does not conflict with

this Court's decisions in Board of Regents v. Roth, 1972, 408 U.S. 564, 92 S.Ct. 2701, 33 La.Ed.2d 548, nor Perry v. Sindermann, 1972, 408 U.S. 593, 92 S.Ct. 2694, 33 La.Ed.2d 570. Roth and Sindermann both involved the question of whether and under what circumstances a non-tenured teacher has a "property interest" in re-employment or is deprived of "liberty" so as to require a due process hearing before dismissal. This is simply not the issue in this case. Mr. Davis is a 40-year-old educator who holds a Master's Degree and hours toward a Doctorate. He has over fifteen years of experience in the Concordia system, and was first made a principal over five years ago when the Concordia School Board operated a totally segregated school system. He has been tenured for many years as both a teacher and a principal. The issue in this case is thus not whether under Roth and Sindermann, Mr. Davis was entitled to due process before being dismissed, but rather his dismissal was violative of the Fourteenth Amendment prohibition against racial discrimination and decisions thereunder.

The decision of the Court below does not conflict with other decisions of the Fifth Circuit in Lee v. Roanoke City Board of Education, __F.2d__ (5th Cir., 72-1656, June 28, 1972); Thompson v. Madison County Board of Education, 476 F.2d 676 (March 13, 1973), reaffirmed in Thompson v. Madison County Board of Education, __F.2d__ (No. 73-3509, 5th Cir., June 20, 1974); and Robinson v. Jefferson County Board of Education, __F.2d__ (No. 73-2134, 5th Cir., October 23, 1973).

Lee merely stated the obvious, that a board need not retain an incompetent teacher, but held that a tenured teacher must be reinstated when terminated without a hearing, and without the use of non-racial objective criteria. In Thompson, the Fifth Circuit set a standard for determining the types of dismissals which could be conducted without the application of objective criteria, carefully providing safeguards against black teachers being dismissed, allegedly "for cause", in circumvention of the Singleton ruling. Thompson thus excepted from the Singleton requirement "types of conduct that are repulsive to the minimum standard of decency". The instant case is not in conflict with Lee, nor Thompson, for in the instant case, the allegations of wrongdoing fall far short of the Thompson exclusion. The Board, however, contends here as they did in the Court of Appeals, that by labelling the charges "for cause", Mr. Davis' case is removed from Singleton's coverage, and that his dismissal, admittedly without objective criteria, was therefore valid. However, Counts One and Two charge only willful neglect of duty and incompetence relative to an alleged lack of adequate records of the Seventh Grade School candy fund. The petitioner Board's recitation of the background of these charges omits the fact that Mr. Davis himself repeatedly requested an audit and bookkeeping assistance relative to this fund, and that the school secretary, who ordinarily administers this fund, was not selected by Mr. Davis, but that three different secretaries were assigned to this job by the Board during Mr. Davis' principalship. (See 5th Cir. App. p. 92-93). Further, the auditor's findings

and recommendations (attached to Defendant's Answer in the District Court) merely recommended a "stricter accounting" and a procedure for collecting vending machine money. Accordingly, under the Thompson standard, it is clear that the conduct which Mr. Davis is alleged to have committed falls far short of that "repulsive to the minimum standards of decency -- such as honesty and integrity". The Court of Appeals was certainly aware of these facts indicated in the pleadings, and merely applied the Thompson standard to the instant case.

The Robinson case is simply not applicable in that apparently the parties in that case did not raise the Singleton issue. Petitioner cites no instances of a conflict with other Circuits on this question, and respondents know of none.

Petitioner's contention that the ruling below emasculates Louisiana's Teacher Tenure Law is simply not true. The decision below is simply an application of the standard enunciated in Thompson, supra, to the facts and circumstances of the particular case at bar. The Fifth Circuit in Thompson was concerned with ending the circumvention of Singleton by school boards, bent on discrimination, labelling dismissals as being "for cause". Further, in the instant case, the Court of Appeals was dealing with a school board which had over the past four or five years repeatedly circumvented and resisted its orders relative to racial discrimination in its employment practices, and in this context, found it

necessary to provide very specific guicelines to prevent such discrimination in the future. The discriminatory practices against black educators by the School Board had recently been so blatant as to even require the establishment of racial ratios in order to avoid discrimination, pending the development of objective criteria. Accordingly, the Court of Appeals in the instant case initially required in its June 15, 1972 order, that this school board provide objective criteria for dismissals "for cause", apparently to prevent this board from further circumventing its orders by sham cause hearings.

Accordingly, the decision of the Court of Appeals is neither in conflict with the decisions of this Court, nor in conflict with decisions of other Courts of Appeals, but rather is a narrow decision limited to the facts of this case designed to bring this recalcitrant school board in line with its decisions. Accordingly, this case does not raise issues of a magnitude which would warrant this Court's granting a writ of certiorari, but rather involves narrow issues limited to the context of this particular case.

II. The Decision Below is Not in Conflict with the Decision of this Court in Edelman v. Jordan, U.S. , 29 La.Ed.2d 662, 94 S.Ct. (March 25, 1974).

It is questionable whether the Eleventh Amendment's applicability as a bar to the

back pay award affirmed by the Court of Appeals is properly before this Court, in that the issue was only raised before the Court of Appeals in an untimely motion for rehearing, and since the case has been remanded to the District Court for determination of the exact amount of the back pay award. However, even if the issue is properly before this Court, it is quite clear that this Court's decision in Edelman, supra, clearly does not bar such an award, and it would be inappropriate for the Court to grant review on this issue. Edelman, supra, is not applicable because (1) this local school board cannot be considered the alter ego of the State for Eleventh Amendment purposes; and (2) here, there has been a determination that the "State action" in dismissing this black educator was racially discriminatory and therefore unconstitutional under the Fourteenth Amendment, and the Fourteenth Amendment particularly as it relates to racial discrimination, limits the State's Eleventh Amendment sovereign immunity.

Louisiana schoool boards, including the petitioner herein, are bodies corporate with the power to sue and be sued (L.S.A.-R.S. 17:51), to make contracts (L.S.A.-R.S. 17:81, 83), to purchase and hold property (L.S.A.-R.S. 17:81), and to sell property (L.S.A.-R.S. 17:87.6). The members of the Board are elected from districts within the parish, and the Board has the power, and in fact does, levy and collect taxes for the support of its schools. Louisiana courts have consistently held that school boards and similar autonomous

subentities are not the alter ego of the State, but are distinct for sovereing immunity purposes. See, Board of CP of New Orleans v. Splendour S&E Co., La. 1973, 273 So.2d 19, and Orleans Parish School Board v. Williams, La. 1974, 300 So.2d 848. Further, federal district courts in Louisiana have reached the same interpretation that school boards are distinct from the State for sovereign immunity and Eleventh Amendment purposes. See, Morgan Dallas Corp. v. Orleans Parish School Board (U.S.D.C, E.D.La., New Orleans Division, August 27, 1969, C.A. No. 69-1431, Rubin, J.) and Stapp v. Avoyelles Parish School Board, (U.S.D.C., W.D.La., Alexandria Division, No. 74-612, Ruling and Order of August 1, 1974, Scott, J.).

This Court in Edelman, supra, distinguished and did not overturn its prior decision in Griffin v. School Board of Prince Edward County, 377 U.S. 218 (1964), indicating at Note 12 that "a county does not occupy the same position as the state for the purposes of the Eleventh Amendment". It thus appears clear that Edelman, supra, does not bar a back pay judgment against a local school board such as petitioner herein. Only the school board, its individual members, and its superintendent are named as defendants herein, and the judgment would not operate against the State of Louisiana or its Treasury, but could be satisfied out of the School Board's tax revenues or out of the pockets of the individual members of the School Board found to be acting under color of law in a racially discriminatory and unconstitutional manner.

Although it appears clear that this case can be disposed of under the Footnote 12 exception of Edelman, respondent notes that a strong argument can be made that the Fourteenth Amendment limits the States' sovereign immunity under the Eleventh Amendment, particularly in the context of racial discrimination, which the Fourteenth Amendment was explicitly designed to end.

CONCLUSION

The decision of the United States Court of Appeals for the Fifth Circuit on June 15, 1972 requiring the development of objective criteria for "cause" dismissals, and its decision of April 24, 1974 disallowing the School Board's tactic of dismissing Mr. Davis during the period in which it had received an extension for submitting the criteria required by the June 15, 1972 Order, were merely appropriately strong rememdies to prevent this recalcitrant School Board from further circumventing the requirements of Singleton. Accordingly, the issue is not of a magnitude which would warrant this Court's exercise of its certiorari jurisdiction. Further, the decision of the United States Court of Appeals is consistent with this Court's decision in Edelman, supra, and fits comfortably within the Footnote 12 exception of that case.

Accordingly, respondent prays that the petition for writ of certiorari be denied.

Respectfully submitted,

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CERTIFICATE

I, Stanley A. Halpin, Jr., Attorney for Respondent, and a member of the Bar of the United States Supreme Court, do hereby certify that on this 3rd day of December, 1974, I served copies of the foregoing Response to Petition for Writ of Certiorari on the attorneys of record for petitioners herein, Mr. John F. Ward, Jr. and Mr. W.C. Falkenheiner, by mailing three copies of same, postage prepaid, to them at their offices, 770 North Street, Baton Rouge, Louisiana 70802, and Office of the District Attorney, Vidalia, Louisiana 71373, respectively.

STANLEY A. HALPIN, JR.
Counsel for Respondent

EXHIBIT "A"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

FILED: September 3, 1970

IRMA J. SMITH, et al.,
Plaintiffs,
UNITED STATES OF AMERICA,
Plaintiff-Intervenor,
versus
CONCORDIA PARISH SCHOOL BOARD, et al.,
Defendants.

CIVIL ACTION
No.11577

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This school desegregation suit was originally filed in Novmeber, 1965. Operating under various forms of freedon-of-choice the school system remained racially segregated. In August, 1969, on remand from Hall, et al. v. St.Helena Parish School Board, et al., 417 F. 2d 801 (5th Cir.,1969), this Court approved a school board proposed desegregation plan which called for the gradual conversion to a unitary system over a three-year period. The plan also provided for the separation of students by sex in the Ferriday and Vidalia schools as they were racially integrated. The plaintiffs appealed and the Fifth Circuit Court of Appeals reversed this Court's order in part and directed the conversion to a unitary system by the beginning of the 1970-71 school year. The question of the constitutionality of sex separation was pretermitted by the Court. Singleton, et al. v. Jackson Municipal Separate School System, et al., ____F. 2d ____(No. 26285, Dec.1,1969). Plaintiffs appealed to the Supreme Court and that court reversed the decision of the Fifth Circuit

and ordered the conversion of the Concordia Parish system by February 1, 1970. Carter, et al. v. West Feliciana Parish School Board, et al., ____U.S._____,90 S.Ct._____(1970).

On remand, this Court, by order of January 30, 1970, ordered the elimination of the dual system by February 1st, but approved the School Board's plan of separating students by sex in the towns of Ferriday and Vidalia, pending a hearing to be held before the start of the 1970-71 school term. Further the January 30, 1970 order of this Court incorporated the ruling of the Fifth Circuit in this case sub nom Singleton v. Jackson Municipal Separate School System, supra, relative to desegregation of faculty and other staff.

On August 5th and 6th the Board's sex separation plan came on for a hearing along with private plaintiffs' motion for supplemental relief for faculty and staff who had been dismissed or demoted in alleged violation of the Singleton provisions. After a day and a half of testimony this Court, because of its overcrowded docket, continued the matters until October. Upon application of private plaintiffs, the Fifth Circuit Court of Appeals by order of August 18, 1970, directed this Court to give preference to this cause and conduct an evidentiary hearing so that its findings of fact and conclusions of law concerning the Board's sex separation modification and teacher dismissal would be made and filed before the beginning of the 1970-71 school term. Accordingly, upon the basis of the oral and documentary evidence offered by the parties at the hearing on August 5, 6, 24, 26 and 27, 1970, and the other materials of record in this case, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

SEX SEPARATION

(1) Sex separation of the schools was first proposed by this Board only after this Court had rejected a gerrymandered zoning plan under which all schools would have remained coeducational, but racially segregated. Although the Board claims that it had considered sex separation for several years prior to 1970, it unquestionably preferred a coeducational system as long as it could maintain racially segregated schools.

The plaintiffs' expert witness, Dr. Scott Kester, Ph.D., an educational psychologist of the University of Miami, testified that he had conducted a survey of persons in Concordia Parish and had determined that the large majority of both black and white citizens of the parish believe the plan to be racially motivated. Moreover, the uncontradicted testimony of black citizens of the parish indicate that the common opinion of the black community is that the only basis for the sex separation plan is to isolate and "protect" white girls from black boys. In light of the consistent, strong testimony of both Dr.Kester and citizens of Concordia Parish, the only possible conclusion this Court can reach is that the plan proposed by the Board insofar as it provides for the separation of the sexes in the schools, is racially motivated and once again, stamps a "badge of inferiority" on black people.

(2) The Court is also convinced from the testimony of Dr. Kester that the plan is educationally unsound. There is no meaningful evidence that boys and girls are, for educationaly purposes, so different as to make sex separation educationally beneficial, and there

is serious question among experts as to whether such separation can be educationally sound under any circumstances.

But most important, is the testimony of Dr. Kester, which this Court finds sound and convincing, that where black students perceive sex separation as racially motivated such would have a positive detrimental affect on their willingness to learn and general educational motivation. It is of course, crystal clear that black students in Concordia Parish do see the plan as racially motivated. The Court thus concludes that the separation of the sexes in the school system is educationally detrimental for black students and as a result, educationally unsound and unconstitutional for the system as a whole.

FACULTY AND STAFF DISMISSALS, HIRINGS, PROMOTIONS AND DEMOTIONS.

(3) This Court finds that approximately twenty teachers (only one of whom is white) who were employed by the Board in the 1969-70 term were dismissed. The Board tentatively hired twenty-six new teachers for the 1970-71 term, all of whom are white.

(4) The criteria developed by the Board for dismissals and demotions included such factors as "personality" and "community relations" and falls short of being objective and non-racial as required by Singleton. The Board has failed to make an evaluation under the criteria. Further the court concludes that the dismissals and demotions were racially discriminatory in their motive and effect.

(5) The following teachers are found to have been dismissed without evaluation under objective criteria and for racially discriminatory reasons:

(5) The following teachers are found to have been dismissed without evaluation under objective criteria and for racially discriminatory reasons:

1. James Aubry
2. Melvara Bell
3. Luther Bradford
4. Roland Bowser
5. James Donald
6. Andrew Irvin
7. Ethel M. Irvin
8. Renice Jackson
9. Velma McCaleb
10. Ernestine Mitchell
11. Inder Mitchell
12. Katie Moore
13. Ray Nelson
14. Virginia Robb
15. Barney Schoby
16. Jerry Smith
17. Delphine Washington
18. Harrington Watson
19. Cleveland Watts
20. Bessie Young

(6) Principalships, assistant principalships, coach positions and all other special or supervisory positions are secured by supplemental contracts on Concordia Parish. These contracts are ordinarily issued no later than June. This year, however, Superintendent Green testified that these contracts had not yet been issued. He testified that Sammy Davis, Jr. and Mack Moore, black former principals, were not to receive such contracts. These are clearly demotions under Singleton. He did not know whether the other black faculty and staff who received such contracts in the 1969-70 term would receive them in the 1970-71 term, thus leaving all black supervisory personnel in a state of limbo.

(7) Superintendent Green testified that there would be no assistant principals in any of the schools in the 1970-71 term. He testified that at least one black principal would become an "instructional supervisor" assigned to a particular school.

(8) Upon the testimony this Court concludes that where a principal is made an "instructional supervisory" assigned to a particular school, this is a demotion.

(9) The testimony of Superintendent Green indicates that at least four promotions to supervisory positions have been made for the 1970-71 term. These promotions were received by Walter Stapley, Ralph Ainsworth, Martha Paul and Charles Tisdale, all of whom are white. No black was offered or received a promotion.

(10) The Court concludes from the evidence that promotions by the Board were racially discriminatory.

(11) For the 1970-71 term, twenty-six white teachers in the words of Superintendent Green were "tentatively offered positions subject to approval of the Concordia Parish School Board and the United States Courts."

(12) Superintendent Green testified that although many black teachers applied none were offered positions.

(13) The Court concludes that the hiring of teachers for the 1970-71 term was carried out on a racially discriminatory basis.

PUBLIC AID TO SEGREGATION ACADEMIES

(14) On the basis of the Board's answers to interrogatories propounded by private plaintiffs and upon testimony scattered

throughout the hearing this Court concludes that the Concordia Parish School Board has loaned or given desks, books and other assistance to private segregationist academies, to wit Concordia Christian Academy and Huntington Academy, in circumvention of this Court's desegregation orders.

CONCLUSIONS OF LAW

(1) Sex-separation in a desegregation plan is constitutionally impermissible except upon a finding based on proof that the plan was devised and is to be promulgated for educational purposes as distinguished from racially discriminatory purposes. United States v. Amite County School District, 5th Cir., 1969___F. 2d ____ (Nos.28,030 and 28,042, slip opinion dated December 10, 1969).

(2) The burden of proof upon a school board to show that a sex separation plan was devised and is to be promulgated for educational purposes is extremely heavy in view of the fact that empirical research in the field of education and psychology has demonstrated little if any educational benefit of separating students by sex.

(3) Sex-separation as a feature of a plan of racial desegregation proposed by a school board which has historically segregated its students by race tends to promote a feeling of isolation in black students and, thus, is educationally unsound for black students and constitutionally impermissible - especially where black students perceive sex separation as being racially motivated.

In Brown, et al. v. Board of Education of Topeka, Kan., et al., 347 U.S. 493 (1954) (Brown I) the Supreme Court discussed the harms inflicted by segregation:

> In Sweatt v. Painter, supra (339 U.S. 629, 70 S. Ct. 850), in finding that a segregated law school for Negroes could not provide them equal education opportunities, this Court relied in large part on 'those qualities which are incapable of objective measurement but which make for greatness in a law school.' In McLaurin v. Oklahoma State Regents, supra (339 U.S. 637 70 S. Ct. 853), the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations:'***his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.' Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.
>
> Brown I, supra, at pp. 493-494

In this case we must similarly draw in such intangible considerations in reference to the harm which will inevitably and permanently be inflicted on those black school children who are subjected to the plan of sex separation.

Indisputably, the proposed plan is the product of racial hostility. The implications[1/]

1/ Numerous authorities have discussed the white man's anxiety as regards to sex and race.

(footnote cont'd on next page)

will not be lost on black children who will continue to feel, with good reason, that they are inferior in the eyes of the School Board, such an awareness cannot but continue to generate, in the black children, "feelings of inferiority as to their status in the community (such) that may affect their hearts and minds in a way unlikely ever to be undone." Brown I, supra at p. 494.

The segregation contemplated by this proposal would deprive the black children of Concordia Parish one further opportunity to develop relationships with members of the

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1/ cont'd

"This rank order-which will be referred to as the white man's rank order of discriminations-...held heavily unanimously in the following:

Rank 1. Highest in this order stands the bar against intermarriage and sexual intercourse involving white women.

Rank 2. Next come the several etiquettes and discriminations, which specifically concern behavior in personal relations...

Rank 3. Thereafter follow the segregations and discriminations in use of public facilities such as schools, churches, and means of conveyance.

It should be noted that the rank order is very apparently determined by the factors of sex and social status, so that the closer the association of a type of interracial behavior is sexual and social intercourse on an equalitarian basis, the higher it ranks among the forbidden things"

1 Myrdal, An American Dilemma at pp.60-61

dominant class;[2] it would curtail their "exemption from legal discrimination implying (their) inferiority in civil society." Strauder v. West Virginia, 100 Wall, 303 at pp. 307-308 (1879).

The argument that white children will also be equally affected by the proposed plan is irrelevant. "Judicial inquiry under Equal Protection, therefore, does not end in a showing of equal application among the members of the class defined by the legislation. The Court must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose." McLaughlin v. State of Florida, 379 U.S. 184 at p. 191 (1964). In Loving v. Virginia, 388 U.S. 1 (1967), the Supreme Court stated that when dealing with racial classifications, "the fact of equal application does not immunize the statute from the very heavy burden of justification which the Fourteenth Amendment has traditionally required of state statutes according to race, "388 U.S. at 9. Certainly the same rule should apply to facially non-racial classifications which are nonetheless racially motivated.

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1 cont'd

(1st ed. 1944)
"Much of the last ditch opposition to school desegregation, and other desegregation, is based on the idea that it will eventually lead to intermarriage."
Greenberg, Race Relations and American Law at p. 343 (1959).

[2] See Fiss, Racial Imbalance in the Schools, 78 Harv.L.Rev. 564 (1965).

(4) "If there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff employed by /a/ school district which will result in a dismissal or demotion of any such staff members, the staff members to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district." Order of January 30, 1970; Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211, 1218 (5th Cir., 1969)(en banc), reversed on other grounds, sub nom; Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1970).

(5) A school system may not dismiss or denote faculty and staff members on the basis of race. Order of January 30, 1970; Singleton v. Jackson Municipal Separate School District, supra at 1218.

(6) The system proposes to assign former black principals and coaches to positions in which they will have "less pay/and/ less responsibility" than in their previous assignments. These new assignments would accordingly be "demotion/s/," as that term is used in the Court's order of January 30, 1970, and in Singleton v. Jackson Municipal Separate School District, supra at 1218.

(7) The defendants historically operated a dual school system and now propose to dismiss and demote a disproportionate number of black persons. For these reasons, and in view of their superior access to the pertinent information, the defendants have the burden of showing "by clear and convincing evidence" that their actions with respect to dismissals and demotions are free of racial discrimination and in accordance with the standards and procedures

set forth in the January 30, 1970 order of this Court. Chambers v. Hendersonville City Board of Education, 364 F. 2d 189, 192-3 (4th Cir., 1966); Rolfe v. County Board of Education of Lincoln County, Tenn., 391 F. 2d 77 (6th Cir., 1968). The Board did not satisfy this burden.

(8) "The Courts have recognized that in the field of racial discrimination statistics such as those set out in /the Findings of Fact/ tell the basic story." Williams v. Wallace, 240 F. Supp. 100, 108, n. 6(M.D.Ala., 1965); State of Alabama v. United States, 304 F.2d 583, 586 (5th Cir., 1962), affirmed, 371 U.S. 37 (1962) (voting); United States v. Board of Education of City of Bessemer, 396 F. 2d 44, 46 (5th Cir., 1968) (faculty assignment); United States v. Indianola Municipal Separate School District, 410 F. 2d 626, 631 (5th Cir., 1969), cert. denied, 396 U.S. 1011) (1970)student assignment); United States v. Sheet Metal Workers Int. Association, Local 36; 416,F.2d 123; 127, n.7 (8th Cir., 1969)(employment discrimination).

In this case, the school system proposes to dismiss and demote a disproportionate number of black faculty and staff members and to hire and promote disproportionate number of white persons, given the availablity of apparently qualified black applicants. In such circumstances, the cases cited above hold that the statistical pattern is a factor which a court may rely upon in finding actions improper; and this Court does so here.

(9) The system did not comply with the requirement that it select personnel to be demoted "on the basis of objective and reasonable non discriminatory standards from among all the staff of the school district." Order of January 30, 1970; Singleton v. Jackson Municipal Separate School District, supra at

1218.

(10) This Court's order of January 30, 1970, and the decision of Singleton v. Jackson Municipal Separate School District, supra, require that "objective" criteria be utilized in selecting persons to be demoted. It appears, on the basis of this record, that a fair method of selecting principals here is to give weight to "objective" factors such as: degrees held; experience in the Concordia Parish system as a principal; total experience as a principal; and experience in education other than as a principal. These are not the only conceivable "objective" factors. There would be a heavy burden to justify reliance on facts predating the last employment of an individual. Henry v. Clarksdale Municipal Separate School District, supra at 688, n. 10; United States v. Indianola Municipal Separate School District, supra at 628. Finally, it is clear that the kind of general "judgments," "conclusions" and "opinions" of the superiority of one employee to another, relied on by the system at the hearing on August 25, 26 and 27 are not the "objective" standards required by the governing case law. United States v. Local 36, Sheet Metal Workers, 416 F. 2d 123, 136, n. 1 (8th Cir., 1969); Dobbins v. Local 212, IBEW, supra, at 453.

(11) The Court must scrutinize possible criteria for determining future assignments to insure that those utilized do not, although facially neutral, perpetuate the effects of past discrimination. See e.g. Lane v. Wilson 307 U.S. 268 (1939) (voting); Hunt v. Arnold, 172 F. Supp. 837 (N.D.Ga., 1959)(voucher requirement for determining admission to college). The size of the school of which a person has in the past been principal might in some instances be one consideration in determining future assignment. Here, however, general application of this criterion would

tend to disadvantage black persons because they were assigned in this system, on the basis of race, to all-black schools, which, in general, were the smaller schools in the system. See Lee v. Macon County Board of Education, 267 F. Supp. 458, 470-2 (M.D. Ala., 1967), affirmed, sub nom. Wallace v. United States, 389 U,S. 215 (1967). Accordingly, reference to school size is appropriate here only where in the particular situation its use does not perpetuate past discrimination.

(12) This Court has broad discretion in fashioning a remedy to eliminate the unlawful practices shown by the evidence presented at the hearing on August 25, 26 and 27. Brown v. Board of Education, 349 U.S. 299-301 (1955); United States v. Montgomery County Board of Education, 395 U.S. 225 (1969). "/T/he court may go beyond the matters immediately underlying its equitable jurisdiction and decide whatever other issues and give whatever other relief may be necessary under the circumstances." Porter v. Warner Co., 328 U.S. 395, 398 (1946). In Brown II, the court recognized that framing appropriate relief in school desegregation cases might require district courts to evaluate "public and private considerations..." Brown II, supra at 300 (emphasis added).

(13) The court has found that the general provisions forbidding discrimination in employment practices in the court's order of January 30, 1970, were ineffective. Non-compliance resulted from improper application of subjective standards. In this situation, the court is authorized to enter more specific relief to insure compliance with the governing legal standards. United States v. Montgomery County Board of Education, supra. Therefore, so long as the Board persists in using subjective standards, and in the absence of a plan containing objective standards for hiring new employees and a method of applying the

standards, the district will be directed to employ new faculty and professional staff members so that the proportion of new black employees is about the same as their proportion currently in the entire system. See Moore v. Tangipahoa Parish School Board, 304 F.Supp. 244, 253 (E.D.La., 1969).

(14) The court has authority to require the system to keep records and report to the court and the parties, with respect to dismissals, demotions, promotions and the employment of new faculty and staff members. Lee v. Macon County Board of Education, supra, 267 F. Supp. at 484-5, 490; United States v. School District 151 of Cook County, Ill., 301 F.Supp. 201, 234-5, 237 (N.E.Ill., 1969).

(15) The law now requires school systems to operate in a unitary manner, pending the outcome of litigation. Singleton v. Jackson Municipal School District, supra at 1216. This procedure may be utilized in this case with respect to dismissals, demotions, promotions, and newly hired faculty and staff.

(16) "State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the /14th/ amendment's command that no state shall deny to any person within its jurisdiction the equal protection of the laws. The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of law." Cooper v. Aaron, 358 U.S. 1 78 S.Ct. 1401, 1410 (1958). See also Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 84 S.Ct. 1226, 1233-4 (1964); Hall v. St. Helena Parish School Board, 197 F. Supp. 649 (E.D. La. 1961), aff'd. per curiam, 368 U.S. 515(1962).

(17) Without reaching the quewstion of the constitutionality of Louisiana statues allowing school boards to provide books, transportation and equipment to private and parochial schools (e.g. L.S.A. - R.S. 17:352, 17:158), the Court finds that if the result obtained under these statutes is public assistance to schools which are racially segregated, such result is unconstitutional and the board can be enjoined from so assisting these schools.

O R D E R

This cause came on for hearing on August 5th and August 24, 1970. The record before the Court contains two school desegregation plans, one submitted by the Office of Education, United States Department of Health, Education and Welfare (H. E. W.) and the other plan submitted by the Concordia Parish School Board. The plan submitted by H. E. W. calls for the zoning of the schools in the outlying areas and for the pairing of the schools in the towns of Vidalia and Ferriday. Similarly, the School Board's plan provides attendance zones for the rural schools, but in the towns of Vidalia and Ferriday assigns students on the basis of sex. The school Board plan was approved on a temporary basis for the spring term of the 1969-70 year by the January 30, 1970 order of this Court. This Court now finds that the Board's plan was devised and promulgated for racially discriminatory purposes rather than educational purposes.

Accordingly, it is therefore ordered that the Concordia Parish School Board, their officers, agents, employees, and all persons acting in concert or participation with them be and hereby are ORDERED to announce and implement, effective the start of the 1970-71

school term, the H. E. W. plan of student desegregation which is a part of the record in this case. The School Board may, if it desires, modify the H. E. W. plan in the following particulars only: that the Clayton School be grades 1-4; and that under alternate Plan II for the Ferriday area, Ferriday Junior High School be grade 8 and Senior High School be grade 7.

IT IS FURTHER ORDERED that in accordance with the decision of the United States Court of Appeals for the Fifth Circuit in Singleton v. Jackson Municipal Separate School System (and consolidated cases en banc), _____F. 2d_____ (No. 26285, December, 1969) and as earlier ordered by this Court in its January 30, 1970 order, the parties defendants are ordered to implement and adhere to the following provisions:

DESEGREGATION OF FACULTY AND OTHER STAFF

The School Board shall announce and implement the following policies:

1. Effective not later than February 1, 1970, the principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is indended for Negro students or white students. For the remainder of the 1969-70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system.

The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments.

2. Staff members who work directly with children, and professional staff who work on the administrative level will be hired,assigned, promoted, paid, demoted, dismissed and otherwise treated without regard to race, color or national origin.

3. If there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff employed by the school district which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective

and reasonable non-discriminatory standards from among all the staff of the school district. In addition if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color, or national orgin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Prior to such a reduction, the school board will develop or require the development of non-racial objective criteria to be used in selecting the staff member who is to be dismissed or demoted. These criteria shall be available for public inspection and shall be retained by the school district. The school district also shall record and preserve the evaluation of staff members under the criteria. Such evaluation shall be made available upon request of the dismissed or demoted employee.

"Demotion" as used above includes any re-assignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he held previously, or (3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonable current period. In general and depending upon the subject matter involved, five years is such a reasonable period.

MAJORITY TO MINORITY TRANSFER POLICY

The school district shall permit a

student attending a school in which his race is in the majority to choose to attend another school, where space is available and where his race is in the minority.

TRANSPORTATION

The transportation system, in those school districts having transportation systems, shall be completely re-examined regularly by the superintendent, his staff, and the school board. Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

SCHOOL CONSTRUCTION AND SITE SELECTION

All school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the recurrence of the dual school structure once this desegregation plan is implemented.

ATTENDANCE OUTSIDE SYSTEM OF RESIDENCE

If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district or reinforce the dual school system.

IT IS FURTHER ORDERED that the Concordia Parish School Board and its Superintendent

file with this Court on or before July 15, 1971 and each subsequent year, a written report reflecting:

(1) Proposed non-racial objective criteria for selecting among all teachers those to be dismissed, if any, and the system's proposed application of those criteria to the teachers in the system, including persons newly employed for the term immediately following the report.

(2) Proposed non-racial objective criteria for selecting among all principals and supervisory staff in the system those to be demoted, if any, and the system's proposed application of those criteria to the principals and other supervisory staff in the system, including persons newly employed for the term immediately following the report.

(3) Proposed non-racial objective criteria for selecting among all coaches in the system those to be demoted, if any, and the system's proposed application of those criteria to the coaches in the system, including any person to be newly employed for the term immediately following the report.

(4) The following with respect to each person to be employed as principal or in any other supervisory position, and each black person who has ever held a principalship or other supervisory position in the system:

Name Address Race Age

for each degree;

-Type

-Year earned

-Major

-Institution earned

-Type of certificate

Classroom teaching experience;

-Total

-In Concordia Parish

Experience as an administrator;
(distinguish among principal, assistant principal and other administrative positions)

-Total

-In Concordia Parish

Employment in term immediately preceding report;

-System

-School

-Position

-Salary

Proposed employment in term immediately following report;

-System

-School

-Position

-Salary

Whether or not in tenure status;

The report should also show for which school(s) no person is presently employed as principal for the term immediately following the report.

(5) The following with respect to each person to be a coach or assistant coach in the system during the term immediately following the report.

Name Address Race Age

for each degree;

-Type

-Year earned

-Major

-Institution earned

-Type of certificate

Classroom teach experience;

-Total

-In Concordia Parish

Coaching experience;

-Total-by sport

-Concordia Parish-by sport

-Record of teams, by sport during last two years as coach in Concordia Parish

Employment in term immediately preceding report;

-System

-School

-Teaching position

-Coaching position

-Regular salary

-Coaching supplement

Also show for each school available coaching positions for the term immediately following the report.

(6) The name, address and race of each teacher achieving tenure status in the year of the report, and the name, address and race of each tenure or non-tenure teacher who was not re-employed for the term immediately following the report and the reason for such action.

(7) The number of new applicants by race for teaching positions in the system for the term immediately following the report, and the number of teachers by race, newly employed for the term immediately following the report.

IT IS FURTHER ORDERED that for the 1970-71 school term, the School Board shall comply with the following provisions, in the nature of a preliminary injunction:

PRELIMINARY INJUNCTION

(1) For the 1970-71 school term the

Concordia Parish School Board is ordered to reinstate all teachers dismissed by the Concordia Parish School Board including but not limited to the following:

1. James Aubry
2. Melvara Bell
3. Luther Bradford
4. Roland Bowser
5. James Donald
6. Andrew Irvin
7. Ethel M. Irvin
8. Renice Jackson
9. Velma McCaleb
10. Ernestine Mitchell
11. Inder Mitchell
12. Katie Moore
13. Ray Nelson
14. Virginia Robb
15. Barney Schoby
16. Jerry Smith
17. Delphine Washington
18. Harrington Watson
19. Cleveland Watts

20. Bessie Young

(2) Should any of these teachers fail to accept employement with the Concordia Parish School Board, because they have already obtained employment or for any other reason, the School Board shall hire black teachers in their stead.

If any of these teachers have moved their residence because of their dismissal and now desire to be re-employed by the school board, the Concordia Parish School Board shall reimburse them for their moving expenses away from and back to Concordia Parish.

(3) New teachers hired for the 1970-71 school term shall be in the proportion of 148 black (total remaining plus total dismissed) to 113 white (total remaining) or approximately 57% black and 43% white.

In other words blacks will compete only against blacks for 57% of the new positions and whites will compete against whites for 43% of the new positions.

"New Teachers" shall include not only teachers who have never been employed by the Board but also teachers who have been only employed as substitutes and former Concordia Parish teachers who were not employed by the Board in the Spring Semester of the 1969-70 term.

No black faculty or staff member shall be demoted (as defined in Singleton) from this status in the 1969-70 school term. In other words no black employee shall receive less pay, responsibility, etc., as set forth in Singleton in 1970-71 than he received in 1969-70. Reassignment from principal to

"Instructional Supervisor" is a demotion under Singleton, if the "Instructional Supervisor" is assigned to a particular school. This provision is specifically applicable to the following, but not limited to them:

1. Sammy Davis, Jr.
2. Mack Moore
3. Edward Jackson
4. William Marsalis
5. Jullian Grey
6. Barbara Rutland

Supplemental contracts shall be issued to each black faculty and staff member including the above who received such in the 1969-70 school term. All promotions from positions held in 1969-70 to positions for the 1970-71 term shall be in the approximate proportion of 57% black to 43% white but in no case shall be less than 50% black. That is, if four promotions are made at least two of these promotions shall be to black employees. The promotions given to white employees, Walter Stapley, Ralph Ainsworth, Martha Paul and Charles Tisdale shall be retracted and appointments to those positions hall be made in the manner described above.

The twenty-six white teachers who have been "tentatively offered positions subject to approval of the Concordia Parish School Board and United States Courts" shall not be hired, except as provided above for hiring of new teachers. Of the thirteen schools in Concordia Parish no less than five shall have

black principals in the 1970-71 school term.

IT IS FURTHER ORDERED, considering defendant School Board's answers to interrogatories propounded by private plaintiffs, that defendant School Board is hereby enjoined from providing desks, books or any other assistance, financial or otherwise to Concordia Christian Academy, Huntington Academy or any other segregation academy. The Board shall secure the return of any desks, books, financial or other assitance given or loaned to these academies in the past. This Court considers all school board members who vote for assistance,financial or otherwise, to these academies personally liable.

IT IS FURTHER ORDERED that:

BI-RACIAL COMMITTEE

On or before October 15, 1970,plaintiffs and defendants shall each nominate ten citizens to a bi-racial committee. The Court will then select five citizens from each set of nominations to serve on the committee. The committee will recommend to the school board and the court ways to attain and maintain a unitary school system. Members shall be appointed each year by July 1st and the chairmanship of the committee shall alternate annually between a white chairman and a black chairman. The school board shall make available the facilities of the school board offices for the committee's meetings and shall supply the committee with such information it may request.

ANNUAL REPORTS

The school board shall make a report to the court, with service upon counsel for all

parties, on October 1 of each year, of the following information:

(1) The number of students by race enrolled in the school district;

(2) The number of students by race enrolled in each school of the district;

(3) The number of students by race enrolled in each classroom in each of the schools in the district and the race of each classes' teacher;

(4) The number of full time teachers by race in the district;

(5) The number of full time teachers by race in each school in the district;

(6) The number of part time teachers by race in the district;

(7) The number of part time teachers by race in each school in the district;

(8) The requests and the results which have accrued, by race, under the majority to the minority transfer provision;

(9) The number of inter-district transfers granted since this court's order, the race of the students who were granted such transfers, and the school district to which the transfers were allowed;

(10) The number of students by race on each bus route and the race of the driver who is assigned to each route;

(11) Whether all facilities such as gymnasiums, auditoriums, and cafeterias are

being operated on a desegregated basis;

(12) A brief description of any present or proposed construction or expansion of facilities;

(13) Whether the school board has sold or abandoned any school facility, equipment, or supplies having a total value of more than $500.00 from the date of this order;

(14) A brief description of the work of the bi-racial committee since the last report;

(15) Copies of all recommendations made by the bi-racial committee.

The Court shall retain jurisdiction of this matter to insure full implementation of this decree. Monroe, La. Sept. 3-1970

s/ Ben C. Dawkins, Jr.
UNITED STATES DISTRICT JUDGE

United States District Court
Western District of Louisiana
This is to certify that the above and foregoing (illegible) is a true and correct copy of the original.

9-8-70
ALTON L. CURTIS, CLERK

By (Signature Illegible)
Deputy Clerk

EXHIBIT "B"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 30556

IRMA J. SMITH, ET AL.,
Plaintiffs-Appellees,

and

UNITED STATES OF AMERICA,
Plaintiff-Intervenor-Appellee,

versus

CONCORDIA PARISH SCHOOL BOARD, ET AL.,
Defendants-Appellants.

Appeal from the United States District Court for the Western District of Louisiana

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(June 15, 1971)

Before GEWIN, GOLDBERG and DYER, Circuit Judges.

BY THE COURT: The Board's attack on the District Court's judgment placing the sixth grade in Vidalia Junior High School is without merit.

The District Court's findings, that the Board had neither developed nor applied objective criteria in connection with the reduction of staff positions, and that the dismissal of black teachers was racially discriminatory, are not clearly erroneous. *See Singleton, et al v. Jackson Municipal Separate School System,* 5 Cir. 1969, 419 F.2d 1211. Nor did the District Court abuse its discretion in establishing faculty racial ratios that would govern personnel changes until the school board formulated objective and reasonable non-discriminatory criteria governing dismissals, demotions, hiring and promotions. *See United States v. Montgomery County Board of Education,* 1969, 395 U.S. 225.

The Board having made no objection or suggestion to the District Court that it desired to tender evidence, we will not entertain, for the first time on appeal, an argument that the court's failure to consider evidence was error.

As of May 1, 1971, there were 5240 students in the system: 2355, or 44.94%, were white; and 2885, or 55.1%, were black. The faculty numbered 297: 141, or 47.47%, were white; and 156, or 52.53%, were black. These ratios substantially comply with *Singleton, supra.* The District Court will require the Board, the plaintiffs, and the Department of Justice to submit, within 15 days, non-discriminatory, non-racial objective criteria to cover both faculty reduction and dismissals for cause. If the parties cannot agree on such criteria, the District Court will, within thirty days thereafter, require the Board to adopt the criteria that the District Court prescribes so as to effectively comply with the provi-

sions of *Singleton, supra.* Once proper criteria have been established the merit qualifications of *Carter v. West Feliciana Parish School Board,* 5 Cir. 1970, 432 F.2d 875, will be applicable. *See Swann v. Charlotte-Mecklenburg Board of Education,* 1971, ____ U.S. ____, ____ S.Ct. ____, ____ L.Ed.2d ____ [No. 281, April 20, 1971].

The District Court shall require the school board to file during the school year a semi-annual report similar to those required in *United States v. Hinds County School Board,* 5 Cir. 1970, 433 F.2d 611, 618-19.

AFFIRMED AND REMANDED with Directions.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

IRMA J. SMITH, et al., Plaintiffs,	)	
UNITED STATES OF AMERICA, Plaintiff-Intervenor,	)	CIVIL ACTION NO. 11,577
VS.	)	
CONCORDIA PARISH SCHOOL BOARD, et al., Defendants	)	

SCHOOL BOARD'S RESPONSE TO ORDER
REQUIRING PRODUCTION OF OBJECTIVE CRITERIA

Pursuant to order of the Court of Appeals of the United States and of this Honorable Court dated the 6th day of July, 1971 that the School Board submit "non-discriminatory, non-racial objective criteria to cover both faculty reduction and dismissals for cause", the Board makes the following response:

I.

FACULTY REDUCTIONS OR DEMOTIONS
NECESSITATED BY CONVERSION TO A UNITARY SYSTEM

This School Board converted to a unitary system in February of 1970, after having been substantially integrated since September of 1969 and partially integrated since 1967. The Board does not see the possibility of any cases arising under this particular category, but if any do develop, the following objective criteria will be applied:

(a.) Seniority in the system will determine the employee to be dismissed or demoted. The employee with the greatest seniority will be given preference.

(b.) In the event seniority is equal, educational background will be used.

The School Board recognizes the defects in this recommendation since there are no provisions in it for merit considerations. However, under the limited circumstances under which this type of situation may arise, and because of the great difficulties in considering and determining merit on a purely objective basis, the Board is willing to use this purely objective criteria in this limited area.

II.

DISMISSALS FOR CAUSE

This School Board proposes to apply as its criteria in this category, the provisions of LRS 17:443, the Louisiana Tenure Act.

(a.) This statute is binding on this School Board until it is declared unconstitutional, or the School Board is ordered by higher authority to disregard it.

(b.) It limits dismissal for cause to neglect of duty, incompetence or dishonesty.

(c.) The procedural requirements satisfy due process.

While this Statute is limited to Tenured Teachers, the School Board has a present policy of using it in all cases of for cause

dismissals, even those of probationary teachers.

There will be cases when a teacher or an employee is hired on a temporary basis for an ad hoc type of situation. In such cases the employment will simply expire upon termination of the particular situation involved and there will be no need to apply this criteria.

This criteria shall be used for the dismissal for cause of permanent employees.

Vidalia, Louisiana this 30th day of August, 1971.

s/ W. C. FALKENHEINER
W. C. FALKENHEINER, Attorney for Concordia Parish School Board

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Order Requiring Production of Objective Criteria was mailed, postage prepaid, this day to Mr. Stanley Halpin, Jr., Attorney for the Plaintiff, New Orleans, Louisiana; and the Justice Dept. of the United States, Washington, D.C.

Vidalia, Louisiana this 30th day of August, 1971.

s/ W. C. FALKENHEINER
W. C. FALKENHEINER